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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

2004 DEC -21 A 8:34

DOCKETED

MARC SPITZER, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES

AZ CORP COMMISSION  
DOCUMENT CONTROL

DEC 02 2004

DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF  
ARIZONA UTILITY SUPPLY & SERVICES,  
L.L.C., FOR THE TRANSFER OF A PORTION OF  
ITS CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO JOHNSON UTILITIES, L.L.C.

DOCKET NO. SW-04002A-02-0837  
DOCKET NO. WS-02987A-02-0837

IN THE MATTER OF THE APPLICATION OF  
ARIZONA UTILITY SUPPLY & SERVICES,  
L.L.C., TO TRANSFER ITS ASSETS AND  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO JOHNSON UTILITIES, LLC.

DOCKET NO. SW-04002A-04-0465  
DOCKET NO. WS-02987A-04-0465

PROCEDURAL ORDER

**BY THE COMMISSION:**

On November 8, 2002, Arizona Utility Supply & Services, L.L.C. ("Applicant" or "AUSS") filed with the Arizona Corporation Commission ("Commission") an application in Docket Nos. SW-04002A-02-0837 and WS-02987A-02-0837 ("the 02-0837 dockets") for the transfer of a portion of its Certificate of Convenience and Necessity ("CC&N") to Johnson Utilities, L.L.C. ("Johnson").

On June 3, 2004, a Procedural Order was issued setting a hearing for July 9, 2004 in the 02-0837 dockets.

By Procedural Order issued June 17, 2004, the hearing date in the 02-0837 dockets was rescheduled for July 16, 2004, at the request of all parties, and the applicable time clock rules were extended accordingly. The Procedural Order referenced the fact that an emergency situation involving potential overflows of wastewater on the AUSS system had been temporarily averted by Johnson's agreement to accept wastewater and effluent from AUSS pending consideration of the pending application. Johnson's agreement to accept wastewater and effluent from the AUSS system was facilitated by the Commission's Utilities Division Staff ("Staff") and the Arizona Department of Environmental Quality.

On June 21, 2004, AUSS filed an application in Docket Nos. SW-04002A-04-0465 and WS-

1 02987A-04-0465 ("the 04-0465 dockets") with the Commission to transfer assets and the entirety of  
2 its CC&N to Johnson.

3 On June 28, 2004, Staff filed a Motion to Consolidate the above-captioned dockets. On June  
4 29, 2004, Staff filed a consolidated Staff Report, recommending approval of the applications subject  
5 to certain conditions.

6 By Procedural Order issued June 30, 2004, the above-captioned cases were consolidated and a  
7 consolidated hearing was scheduled for July 16, 2004.

8 On July 16, 2004, the hearing was held as scheduled. At the conclusion of the July 16, 2004  
9 hearing, the parties requested additional time to engage in settlement discussions regarding certain  
10 issues that arose shortly before and during the July 16, 2004 hearing.

11 Procedural teleconferences were conducted with all parties on July 30 and August 6, 2004.

12 On August 4, 2004, AUSS filed a Chapter 7 bankruptcy petition in U.S. Bankruptcy Court for  
13 the District of Arizona (Case No. 4:04-bk-3873-JMM).

14 By Procedural Order issued August 9, 2004, a hearing was scheduled for August 25, 2004 in  
15 the consolidated AUSS/Johnson CC&N transfer application cases.

16 On August 18, 2004, the Commission issued a Show Cause Order against AUSS in Docket  
17 No. SW-04002A-04-0600 regarding alleged deficiencies at two of the Company's wastewater  
18 treatment facilities (Decision No. 67101). The Order also directed Staff to appoint an interim  
19 manager to operate the AUSS system in order to protect the health, safety, and welfare of AUSS  
20 customers.

21 On August 24, 2004, a telephonic procedural conference was conducted to discuss the status  
22 of the CC&N transfer proceeding. The parties agreed that the August 25, 2004 hearing should be  
23 cancelled and that a subsequent status conference should be held after the parties have an opportunity  
24 to discuss the possibility of settlement of issues raised in the above-captioned dockets, as well as in  
25 the AUSS bankruptcy proceeding.

26 Additional telephonic status conferences were held on September 13, September 29, October  
27 14, October 21, and November 4, 2004. During those conferences, the parties indicated that ongoing  
28 attempts were being made to negotiate a resolution of the issues raised in the above-captioned

1 dockets, as well as by the bankruptcy proceeding.

2 On November 19, 2004, Scott Rhodes of the law firm Jennings, Strouss & Salmon, PLC, filed  
3 a Motion to Withdraw as Counsel ("Motion") for intervenor RS Investments, LLC ("RSI"). The  
4 Motion stated that RSI consents to its counsel's withdrawal and that RSI's interests in this proceeding  
5 will not be prejudiced by the withdrawal. No other party objected to the Motion.

6 A further telephonic status conference was conducted on December 1, 2004. During the  
7 December 1, 2004 conference, the parties indicated that the bankruptcy court had approved a  
8 settlement agreement that would transfer the AUSS assets to Johnson Utilities and, as a result, the  
9 critical issues have been resolved that contributed to the prior delay in concluding the hearing in the  
10 above-captioned dockets. The parties therefore requested that the hearing in this matter be resumed  
11 on an expedited basis.

12 IT IS THEREFORE ORDERED that the hearing in this matter shall resume on **December 9,**  
13 **2004, at 1:00 p.m.,** at the Commission's offices, 1200 West Washington Street, Phoenix, Arizona.

14 IT IS FURTHER ORDERED that the Motion to Withdraw as Counsel is granted and the law  
15 firm Jennings, Strouss & Salmon, PLC is permitted to discontinue its representation of RS  
16 Investments, LLC in this proceeding.

17 IT IS FURTHER ORDERED that the Ex Parte Rule is still in effect.

18 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,  
19 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at  
20 hearing.

21 DATED this 2<sup>nd</sup> day of December, 2004

22  
23 

24 DWIGHT D. NODES  
25 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

26 ...  
27 ...  
28 ...

Copies of the foregoing mailed  
this 2 day December, 2004 to:

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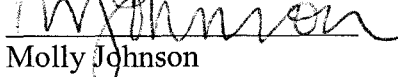
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